

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2411 OF 2006
 WITH
 CRIMINAL WRIT PETITION NO. 2412 OF 2006
 WITH
 CRIMINAL WRIT PETITION NO. 2413 OF 2006
 WITH
 CRIMINAL WRIT PETITION NO. 2416 OF 2006
 WITH
 CRIMINAL WRIT PETITION NO. 2417 OF 2006

 Office notes, office :
 Memoranda of Coram, :
 appearances, Court's : Court's or Judge's Orders
 orders or directions :
 & Registrar's orders. :

Mr. S. R. Chitnis i/b Mrs. V.
 R. Raje for petitioner

Ms. M.M. Deshmukh, APP

CORAM: SMT. RANJANA DESAI, J.
DATED:-13/12/2006

P.C.:-

In these group of writ petitions
 externment order issued by Deputy
 Commissioner of Police, Zone-II,
 Panvel, New Bombay are under
 challenge.

2. I am informed that the
 petitioners have filed appeals before
 the State Government under Section 60
 of the Bombay Police Act. The said

: 2 :

appeals are posted for hearing on 17/1/07. Admittedly the appellate authority has rejected the stay applications filed by the petitioners.

3. Mr. Chitnis, learned counsel for the petitioner has drawn my attention to the Division Bench judgment of this court in Shamkumar Arjun Dalvi v. The State of Maharashtra & Anr., 1988(1) Bom.C.R. 131. In that case State Government had declined to stay the orders of externment which were challenged in the appeal filed before it. This court observed as under:

"Now, when an appeal is provided by the statute and the same is filed, it is then, in a matter of externment, but just and fair that pending the appeal, the externment is stayed. Refusal in that behalf may, in a given case, as well render the appeal itself infructuous. We are informed that stay is not granted as a matter of policy.

: 3 :

If that is so, it is rather unfortunate. It tends to defeat justice. The need for externment should be balanced with the requirement to be just, fair and reasonable to the externnee. If a life convict can be released on bail or a preventive detainee on parole or one accused of serious economic offence granted even anticipatory bail, what is so extraordinary qua an externnee that in no case he should be given stay. Besides, discretion vested in an appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts and facts of each case. In all the circumstances, we are inclined to grant stay pending the appeal with direction to decide the same expeditiously."

4. Mr. Chitnis contended that in view of this observation of this court it is necessary to stay the externment order pending appeal.

5. The learned APP on the other hand drew my attention to the observation of this court that discretion vested in the appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts of each case. She submitted that the facts involved in the instant cases are gross and, therefore, this court should not stay the externment orders. The State has not filed any affidavit-in-reply opposing admission and stay.

6. In my opinion, considering the fact that appeals are posted for hearing on 17/1/07, in the light of judgment of this court in Shamkumar's case (supra), the externment orders will have to be stayed. However, the learned APP's submission that the activities of the petitioners are gross cannot be lightly brushed aside.

7. Without expressing any final opinion on the correctness or

: 5 :

otherwise of the said statement, stringent conditions need to be imposed on the petitioners while staying the externment orders, so that purpose of externment is not frustrated. Hence I pass the following order:

"The State Government shall hear and dispose of and pass orders on the appeals filed by the petitioners which are pending before it on 17/1/2006 or in any event by 30th January, 2007. The order passed by the State Government may be communicated to the petitioners. During the pendency of the appeals the externment orders shall remained stayed. If the orders passed by the State Government are adverse to the petitioners, they shall not be executed for two weeks from the date thereof. The stay of the externment orders is subject to the condition that petitioners in each of these petitions attend Panvel City Police Station everyday between 4 to 6 p.m. Needless to say that should there be any breach of this order and

: 6 :

the petitioners indulge in any illegal activities, it will be open to the State to move this court immediately for vacating this stay order.

I make it clear that on the merits of the case I have expressed no opinion.

Petitions are disposed of in the aforestated terms.

JUDGE .